

MINUTES
REGULAR MEETING OF BOARD OF LAND COMMISSIONERS
April 21, 2008, at 9:00 a.m.
Room 303 State Capitol Building
Helena, Montana

PRESENT: Governor Brian Schweitzer, Attorney General Mike McGrath, Superintendent of Public Instruction Linda McCulloch, Secretary of State Brad Johnson, and State Auditor John Morrison

Ms. McCulloch moved for approval of the minutes from the March 17, 2008, meeting of the Board of Land Commissioners. Seconded by Mr. McGrath. Motion carried unanimously.

BUSINESS CONSIDERED:

408-1 WEST FORK BERRY CREEK TIMBER SALE, LIMITED ACCESS

Ms. Sexton stated that this parcel is located in Stillwater County near Columbus with a negotiated sawlog rate of \$9.60 per ton and a pulp rate of \$2.00 per ton. The sale was initiated by Rimrock Timber with five harvest units for a total of 200 acres. This is a limited access sale with a short timeline because the adjoining landowner is also offering a timber sale in the vicinity, thus giving the DNRC the opportunity to get into an area that would otherwise have limited access.

Motion was made by Mr. McGrath for approval of the timber sale. Seconded by Ms. McCulloch. Carried unanimously.

408-2 SMALL LOST TIMBER SALE

Ms. Sexton stated this sale is the third sale of the Three Creeks EIS which comprises 15 acres in the Swan and is primarily for smaller operators. There has been some concern expressed regarding this sale because some old growth is involved. Ms. Sexton advised postponing the sale until DNRC is able to meet with the groups that have expressed concern over the old growth. The DNRC would schedule a tour of the site with the interested groups and the timber industry representatives in late June or early July. The DNRC held previous tours that not all of the concerned parties had been able to attend. After the June/July tour the Small Lost timber sale would be included with the other Three Creeks timber sale on the August agenda.

Motion was made by Mr. McGrath to postpone decision on the Small Lost timber sale. Seconded by Mr. Johnson.

Governor Schweitzer asked how many tours had been offered in the past?

Ms. Sexton said that there have been four tours: June 2005, September 2005, October 2005, and January 2008.

Governor Schweitzer asked what the participation level had been on the previous tours?

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Ms. Sexton said there had been a lot of community participation, including local conservation groups and timber industry representatives in the Swan Valley area—statewide conservation groups have not been involved. Ms. Sexton extended a specific invitation to these groups to participate in the June 2008 tour.

Governor Schweitzer asked if the statewide conservation groups had been specifically invited in the past?

Ms. Sexton stated that the list of groups to be included is extensive and they have all been invited.

David Groeschl, Forest Management Bureau Chief, stated that there is a scoping list comprised of local organizations, community groups, environmental organizations, and industry representatives that is maintained at each unit office.

Governor Schweitzer asked what the comments of the Swan Valley local groups had been after viewing the proposed area?

Ms. Sexton said that these groups—particularly the Swan Ecosystem Center—were supportive of the efforts of the DNRC to harvest old growth timber, especially in the Swan area where there are forest health and disease issues. That harvest unit is of particular interest because, while being only 15 acres, it does have forest health issues and would be an ideal example for these groups.

Governor Schweitzer reiterated that the motion on the table was to postpone the Small Lost sale in order to schedule another tour for the groups that were unable to attend the four previous tours.

Motion to postpone the Small Lost timber sale carried unanimously.

408-3 FINAL APPROVAL FOR SALE OF LAND BANKING PARCELS - #92,111,
194,182, 186

Ms. Sexton stated that this proposal is for final approval for the sale of land banking parcels in Garfield County. The auction was held on March 27, 2008, for a total sale amount of \$435,900. There were five lessee-nominated sections sold to three different purchasers. All sales will close within thirty days of approval.

Motion made by Mr. Johnson for final approval. Seconded by Mr. McGrath. Carried unanimously.

408-4 FINAL APPROVAL FOR SALE OF LAND BANKING PARCELS - #216, 217,

Ms. Sexton stated that this proposal is for final approval for the sale of two parcels in Choteau County. The purchaser, Jerry Jenkins, is the current lessee whose ranch has been in the Jenkins family since 1910. The Jenkins family was unsuccessful in their efforts to purchase the land in the 1950s. The total selling price is \$204,480 with an average selling price of \$212 per acre.

Motion made by Mr. Morrison for final approval of the sale. Seconded by Ms. McCulloch. Carried unanimously.

408-5 PRELIMINARY APPROVAL FOR LAND BANKING ACQUISITION –
VALENTINE WATER PROJECT

Ms. Sexton stated that this parcel is in the Blood Creek drainage in Fergus County and is owned by the DNRC Water Resources Water Projects Bureau. The Valentine Water Project was an old project of the Water Resources Division and contains approximately 204 acres of rangeland which is valued between \$350 and \$400 per acre for a total cost of between \$106,400 and \$121,600. The project was constructed in 1937 for irrigation purposes, failed in 1962, and was never reconstructed. The Water Resources Division has in the past sold water projects that no longer meet their specifications. Monetary payment is required since this is a sale from one DNRC division to another. The current state trust land parcel bisects the two parcels of Water Resources land. The trust land parcel is currently leased, and the lessee understands that the goal of the Trust Land Division is to obtain one complete block of land for lease. The trust land is currently leased until 2016.

Motion made by Mr. Morrison for preliminary approval of the acquisition. Seconded by Ms. McCulloch. Carried unanimously.

408-6 PRELIMINARY APPROVAL FOR SALE OF LAND BANKING PARCELS

The 111 land banking parcels were divided by land offices and considered in four blocks.

408-6A CENTRAL LAND OFFICE (2777.21 ACRES)

Ms. Sexton stated that from the Central Land Office there are three counties with 2777.21 acres (1520 isolated acres). Over 80 percent of the parcels suggested for preliminary approval are on isolated acres. The DNRC received specific comments on some areas that are accessible, thus some of the parcels in Toole County were withdrawn from sale. The Wildlife Federation had requested that no legally accessible lands be offered for sale. The DNRC noted that there is a land banking rule that allows that only 75 percent of the land be isolated. The DNRC has been very clear that all the lands acquired have access, resulting in a tremendous net gain in accessibility through the land banking program.

Motion made by Mr. McGrath for preliminary approval of the CLO land banking parcels. Seconded by Mr. Johnson. Carried unanimously.

408-6B NORTHEASTERN LAND OFFICE (7173.01 ACRES)

Ms. Sexton stated the proposed parcels from the Northeastern Land Office are in Blaine, Choteau, Fergus, Golden Valley, Hill, and Wheatland Counties and comprise 7173.01 acres (6668.41 isolated acres). One 640-acre parcel in Golden Valley County was withdrawn due to concerns from FWP over sage grouse habitat and viability. There have been comments regarding recreational access in a parcel in Wheatland County that is within a Hutterite Colony. This parcel was not withdrawn from consideration because the property contains a rock quarry and a hog waste lagoon and the hunting was marginal. The DNRC is also retaining all of the wind rights on all parcels in Wheatland County.

Motion made by Ms. McCulloch for preliminary approval of the NELO land banking parcels. Seconded by Mr. Morrison.

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Governor Schweitzer asked if the DNRC retains mineral interests when the surface land is sold or if they were included in the sale?

Ms. Sexton stated that statutorily the DNRC must keep the mineral rights. Wind rights are separate because they are surface rights. The DNRC is retaining the wind rights because of the considerable amount of activity in this area.

Mr. Morrison noted that the DNRC has more acres of mineral rights than surface rights.

Motion carried unanimously.

408-6C SOUTHERN LAND OFFICE (1320 ACRES)

Ms. Sexton stated there are three parcels comprising 1320 acres (1280 isolate acres) for consideration in Big Horn, Carbon, and Yellowstone Counties. Some commenters in Carbon County opposed the sale and questioned how the money would be handled. There was one comment about elk habitat, but FWP had no comments regarding this parcel. There was also a comment expressing concern that sale of this property could have a negative effect on the property values of neighboring properties. The DNRC's response was that the purpose of state trust land is not to enhance the property values of other private landowners.

Motion made by Mr. McGrath for preliminary approval of the SLO land banking parcels. Seconded by Mr. Johnson. Carried unanimously.

408-6D SOUTHWESTERN LAND OFFICE (943.15 ACRES)

Ms. Sexton stated this is for preliminary approval for three parcels in Powell County. There is particular interest in Powell County because the DNRC has already purchased land there. The property is adjacent to the Tupper Lakes property the DNRC will be purchasing. There were comments regarding the fact that a portion of Rock Creek, which is a part of a bull trout recovery stream, flows through this parcel. The DNRC tries to sell in counties in which purchases are also being made and has previously made purchases in the Blackfoot. The DNRC feels it appropriate to sell isolated parcels in the Blackfoot and has visited with members from the Skyline Sportsmen regarding suggested sales and proposed purchases, emphasizing the accessibility of the proposed purchases.

Motion made by Mr. Johnson for preliminary approval of the SWLO land banking parcels. Seconded by Ms. McCulloch. Carried unanimously.

408-7 APPROVAL FOR COMMUNITIZATION AGREEMENT – HEADINGTON OIL

Ms. Sexton stated this communitization agreement is with Heading Oil for 640 acres in Richland County out of a total area of 1260.64 acres. The Stampede State 14X-36 well is a bi-lateral horizontal Bakken formation well. The state land comprises 50.77 percent of the area and the DNRC would receive a little over 50 percent of the royalties for oil and gas production.

Motion made by Ms. McCulloch to approve the communitization agreement. Seconded by Mr. Johnson. Carried unanimously.

408-8 PROPOSED ADMINISTRATIVE RULE COAL AMENDMENTS

Ms. Sexton stated that the DNRC reviews its administrative rules to ensure they are consistent with Statute and with each other. Currently there are instances in which the Statutes and the ARM (Title 36, chapter 25, subchapter 3) regarding coal leasing are inconsistent. Some of the proposed amendments are in rules regarding foreign interests, requirements for qualified lessees to reflect statutory provisions, lease sale processes to reflect website and e-mail technology, automatic lease termination for contracting with foreign interests, and a provision for authorizing reduced royalty rates for private use of coal.

Motion made by Mr. Morrison to move forward in the ARM amendment process. Seconded by Ms. McCulloch.

Governor Schweitzer asked if any particular coal company or entity had proposed these recommendations?

Mr. Mason said no. The proposed changes were based solely off of Mr. Mason's review of the ARM and Statute.

Mr. Johnson stated that the Secretary of State's Administrative Rules Bureau frequently deals with routine amendments of this nature.

Motion carried unanimously.

408-9A RIGHTS-OF-WAY

Ms. Sexton stated that these are standard right-of-way applications. The Sweet Grass County application for a government communication tower may be a temporary or permanent easement, depending on access agreements with private landowners. There are ongoing negotiations for access through private land.

Motion made by Mr. Johnson to approve the rights-of-way. Seconded by Mr. McGrath. Carried unanimously.

408-9B SPRING PRAIRIE PERMANENT EASMENT EXCHANGE

Ms. Sexton stated this is a proposal is for an internal exchange easement. There are plans for a new administrative site in Kalispell that will incorporate many different divisions of state government, including DEQ and the Flathead Basin Commission. The current easement totals 8.166 acres and the proposed exchange is for approximately 11 acres. This proposal meets the criteria for exchange under the Board of Land Commissioners Exchange Criteria.

Motion made by Ms. McCulloch to approve the exchange. Seconded by Mr. McGrath. Carried unanimously.

Motion to adjourn made by Ms. McCulloch. Seconded by Mr. McGrath.